

the CSMG study reports results for Akron, Ohio, which is not included in Crandall's report. According to CSMG, less than 25 percent of "off net" buildings in Akron are addressable by existing competitive LEC fiber. *Id.* This is powerful evidence that Dr. Crandall's methodology grossly inflated the potential building revenues achievable by competitive LECs and that selective filtering of results has occurred.

Further, even the cursory description of Dr. Crandall's approach and the limited documentation provided by USTA in time for this filing demonstrate that there are several errors in the analyses that attempt to identify potential high-capacity customers and calculate the costs of extending competitive LEC networks to them. And there is no meaningful justification for an argument that the six city sample presented is representative of competitive conditions throughout the country.

The models used to identify high-capacity locations. The method used to identify buildings with high-capacity customers is flawed. Because it is assumed that a "high-capacity" customer is one that requires a single DS-1 of usage, Crandall Dec. at 18, the Probit model draws buildings with fewer than eight DS-1s of usage into the "potential" high capacity customers and then includes such buildings in the remainder of his analysis.²⁶ Moreover, the model attributes revenues from all customers in a building for all services to determine the overall revenue potential of the building. In AT&T's

²⁶ Part of the reason that Dr. Crandall must assume that a carrier not only wins 100 percent of a customer's demand, but also 100 percent of the demand for all customers in a building, is because without this patently absurd assumption individual customers in many buildings would probably not have sufficient demand to even qualify for consideration of a build, much less actually have a facility built.

experience, however, it is rarely economic to deploy facilities to a building unless it has at least eight DS-1s of usage.²⁷ The results showing the number of buildings that are “above” the break-even revenue threshold, *see id.* at 30, 46-50, therefore include buildings for which it would never make economic sense to incur the significant fixed costs necessary to deploy high-capacity facilities.²⁸ And it is for this reason that the conclusions of Dr. Crandall directly conflict with the judgment of investment professionals who see no more than 30,000 to 60,000 buildings addressable nationally by competitive LEC fiber extensions in the near term.²⁹

Another error in the estimation of the revenue potential for business telecommunications users is the manner in which the OLS regression model is used to estimate expected telecommunications revenues, *i.e.*, based upon the number of employees and the SIC for the company. *See* Crandall Dec. at 40-41. In particular, there is no support provided for the use of a simplistic linear regression model in this context.

²⁷ Indeed, a straightforward review of incumbent LEC pricing in their interstate special access tariffs relating to channel terminations (the functionality replaced by fiber laterals) shows almost uniformly that a DS-3 channel termination would replace a DS-1 channel termination only when it replaces at least eight to 10 DS-1 channel terminations. This reflects the fundamental economic reality that no one builds a bare DS-1 facility and that at least eight times the level of demand assumed by Dr. Crandall is required to justify a high-capacity facility build.

²⁸ The supporting materials that AT&T has reviewed to date are not sufficient to allow AT&T to estimate what percentage of the buildings that Dr. Crandall considers to have a high-capacity customer contain customers with less than eight DS-1s of usage and, therefore, are not in fact “targetable” customers.

²⁹ *City Light: An Investor Guide to Metropolitan Optical Services*, at 11, (March 22, 2001).

Use of such a linear model is highly suspect in this case, because the distribution of telecommunications revenues from business customers is typically skewed, with relatively few customers in the higher revenue strata. The statistically correct approach for dealing with highly skewed data is to transform the data so that the transformed distribution is more approximately linear before performing a linear regression.³⁰ There is no explanation offered to justify the use of simple linear regression model, or the failure to do a data transformation. For this reason alone, the modeling results are invalid.

Furthermore, because the six separate cities examined would likely have different calling patterns, prices and mix of industries, one would expect that the regressions would be *separately* applied for each city and the individual models applied to each city's analysis. As noted, Dr. Crandall improperly uses *national* survey data to determine the likelihood a customer would buy special access services in a particular city. See Crandall Dec. at 12-13.

These and other flaws manifest themselves in the tables that report Dr. Crandall's computations. Table A1 of the declaration identifies seven SICs as the buildings most

³⁰ Revenue data are almost always highly skewed. As a result, analysis of untransformed data would probably violate all the main assumptions of linear regression: linearity, additivity, constancy of error variance, and normality for the distribution of errors. Consequently, the resulting model would not be correct (even after accounting for sampling error). For highly skewed data, predicted values could exceed the actual value of the dependent variable for the vast majority of observations. Because Dr. Crandall bases his conclusions on these predicted values, this problem would seriously distort his conclusions. In addition, his results would be highly at risk to outliers; that is, a few of the observations could violently change the predicted values for all other observations.

likely ($t > 4.0$) to have a high-capacity customer. However, in Table A2, five of these same seven SICs have $t < 1.0$ for the regression that estimates the telecommunications revenues associated with these buildings. In addition, the interaction terms for all seven SICs have t of 1.4 or less, which again strongly indicates that the reliability of the estimates is dubious. In particular, the low values of the t statistics indicate that the revenue estimates from the OLS model have large confidence intervals around them and all revenues within a confidence interval have equal statistical validity. That means that when Dr. Crandall used the point estimate in the middle of the confidence interval, the revenues at the bottom and top of the interval have equal statistical validity.

To take this into account, Dr. Crandall should have performed a sensitivity study, especially for revenues at the lower bounds of the intervals. However, no such sensitivity study was provided in the Crandall declaration, which also does not provide the underlying data that would allow others to do so. The reasons for failing to perform such a sensitivity study here are obvious. Revenues within the confidence interval that are below the mid-point revenue figure that Dr. Crandall used are likely to have a significant effect in decreasing the number of buildings that competitive LECs' could profitability serve.

The model used to determine the location of fiber and how far it must be extended to reach customers. With regard to determining the distance that fiber must be extended – an important driver of the costs of extending a network – Dr. Crandall does not identify or address the possible different uses for fiber listed in his iMap data set. See Crandall Dec. at 23-26. Rather, it appears that he simply assumed that all the fiber identified can

be used for special access. *See id.* That is wrong. Interexchange backbone fiber cannot be a substitute for the incumbent LEC *local* facilities that competing carriers must use to provide local and special access services. Pfau Dec. ¶ 23. Likewise, it is also assumed, without justification, that none of the fiber is at capacity or reserved for a particular use and, therefore, not available for additional special access use. *See* Crandall Dec. at 23-26.

These simplistic assumptions are demonstrably wrong. For example, as shown in fiber “map” for Cleveland, Ohio and Seattle, Washington, Dr. Crandall relies on Level 3’s fiber in performing his calculations. *See* Crandall Affidavit, Appendix, Part F. However, as AT&T previously explained, *none* of Level 3’s fiber is local; it is all long-haul fiber. Pfau Dec. ¶ 26. Similarly, in concluding that competitive LECs are not impaired in Tucson, Arizona, Dr. Crandall relies critically on the ability of e.spire to extend its network. *See* Crandall Affidavit, Appendix, Part F. That company, however, is now bankrupt.³¹ Rather than being plentiful, metropolitan fiber capacity is scarce and, as a result, the entire premise of Dr. Crandall’s analysis and his conclusions come crashing down.³²

³¹ Similar problems may exist for Greenville, South Carolina, but Dr. Crandall does not identify the companies that have purportedly deployed fiber in that city. *Id.*

³² In contrast to long-haul bandwidth connecting most major population centers, metro bandwidth is scarce. “[W]e believe there is a clear distinction between metro-area scarcity and the relative over-capacity that exists between cities, with multiple fiber providers often traversing redundant intercity stretches. In essence, long haul networks operate today at multi-Gigabit speeds while metro-area networks are burdened by legacy infrastructures (or entire lack of infrastructure) that were designed for outmoded circuit-switched applications, are bandwidth-constrained, and generally take a long time to
(continued . . .)

The model used to calculate “break-even” revenues. The CSMG model uses a gimmick to calculate the “breakeven” revenues required by a competitive LEC to achieve an NPV of zero for extending its network to “potential” customers. In particular, the model does not estimate competitive LEC revenues or cash flows after 10 years of service. Instead, it assumes a “terminal value” for such revenues by multiplying the Year 10 EBITDA (earnings before income taxes, depreciation and amortization) of each competitive LEC by a factor of 10.

According to the spreadsheet provided, only about *half* of initial capital outlay for a “typical” extension is offset by the cash flow from providing service for 10 years. The other half is offset by the assumed terminal value – those earned after the first 10 years.³³ In the real world, no competitive carrier could ever hope to obtain financing to build a local telecommunications project in which it would only recover half of its investment in the first 10 years. Thus, by assuming a post-10 year terminal value, Dr. Crandall grossly

(. . . continued)

provision.” *City Light: An Investor Guide to Metropolitan Optical Services*, at 4 (March 22, 2001).

³³ The spreadsheet USTA provided that shows the application of the CSMG study to Cleveland, Ohio for a 500 foot extension. According to the spreadsheet, the CSMG model has a negative cash flow in Year 1 of -\$102,151. In other words, the model assumes that in the first year of operation a competitive LEC in Cleveland would have to spend \$102,151 to extend fiber 500 feet and provide service. The assumed terminal value in Year 10 is calculated as 10 times the Year 10 EBITDA ($10 * (\$21,013) = \$210,130$). The effect of this on the NPV calculation (discounted at the assumed cost of capital of 15 percent) to a year 0 reference point is $\$210,130 / (1.15)^{10} = \$51,941$. Thus, about half the costs incurred to extend the network are recovered through the terminal value assumption.

understates the minimum revenues that a building would need to generate to make a network extension economic.

To the extent that competitive LEC business models can be predicated on retaining a customer for more than 10 years, the terminal value assumed in the CSMG study is still excessive. If the Year 10 EBITDA recurred every year thereafter for *infinity* at the assumed 15 percent cost of capital, the NPV in Year 10 would be as follows: (Year 10 EBITDA / .15) = 6.67*(Year 10 EBITDA). Therefore, by multiplying the Year 10 EBITDA by 10 (instead of 6.67), the model assumes that a competitive LEC's EBITDA somehow grows *larger* after year 10.³⁴ By contrast, if a more realistic terminal value of 6.67 * Year 10 EBITDA was used, the annual "breakeven" revenue requirements calculated by Dr. Crandall would increase significantly.³⁵

Furthermore, Dr. Crandall's analysis appears to ignore much of the costs of delivering services other than for long distance services. The CSMG study indicates that the minimum revenues required for a building were deduced by first determining the incremental costs (negative cash flows) then adding incremental revenues and the cost associated with the incremental revenues (generally a positive cash flow) until a point is

³⁴ Not only is that contrary to common sense, it is at odds with the fact that spreadsheet shows that EBITDAs steadily *decline* from Year 2 (\$24,435) through Year 10 (\$21,013). Similarly, the annual free cash flows steadily decrease from Year 2 (\$20,309) through Year 10 (\$841).

³⁵ As discussed below in Part IV, it is impossible to determine precisely the impact of changing the terminal value to a more realistic figure because USTA provided a "read only" version of the CSMG model and reviewers cannot change the input assumptions that are embedded in the spreadsheet.

reached where the NPV of these cash flows is zero. Said another way, profitable service revenues are added until the where the investment breaks even, at which point the minimum revenue requirement from a building is determined. Because only the profits from these revenues can offset the investment to reach the building, it is critical that the “service revenues” gained reflect a reasonable profitability assumption. The underlying information from the CSMG study, however, indicates that for every dollar of revenue that is generated by a building, 30 percent is long distance revenue (and accordingly 70 percent is other service revenues). *See* CSMG Report at 32. The long distance revenue is also assumed to generate costs at the rate of 80 cents per long distance dollar. What is notably absent is any discussion of service costs that are added with every additional dollar of non-long distance service revenues. If significant cost for providing the non-long distance services are omitted, the only conclusion that can be drawn from disclosures to date, then the minimum revenues necessary to economically deploy fiber to a building are grossly understated.

The “national” conclusions. The interplay of the preceding weaknesses makes Dr. Crandall’s results unreliable not only for the six markets individually modeled but also for any general conclusion – particularly with respect to any assessment of impairment at the national level. Dr. Crandall does not statistically (or in any other way) justify the assumption that the six cities discussed are representative of the nation as a whole. Nevertheless, he boldly asserts that nationwide special access competition can be inferred from these six cities, based on the simple fact that these cities represent a range of population – and nothing more. *See* Crandall Dec. at 20-21. In fact, he concedes that

his choice of cities was not the result of any valid sampling technique; rather, it was really driven by “the availability of up-to-date fiber data from iMapData.” Crandall Dec. at 21 n.35. Thus, it is clear any attempt to justify the selection of cities is an after-the-fact contrivance and that the only thing “representative” about these cities is that they are places for which a vendor had some data available on fiber ring deployment (and are therefore more likely to be the cities with the most mature competitive markets).

Moreover, the six cities cannot be a statistically reliable basis for extrapolating to national conclusions, especially given the wide variation in the results shown in Tables A3 and A4 of the Crandall declaration. For each pair of cities (*i.e.*, large, medium and small), the percent of addressable “potential” customers by distance at 500 and 1000 feet is very different for the two cities within each pair. The 500 and 1000 foot distances are important, because competitive LECs have the greatest chance for profitability when they only need to construct facilities over shorter distances. However, the great variability within each city pair studied creates significant doubt that the city pairs studied adequately represents all cities of that size and makes clear that an important national policy cannot be set on the basis of this limited sample.

IV. USTA HAS FAILED TO ADEQUATELY DOCUMENT DR. CRANDALL’S MODELS; THEREFORE, HIS REPORT MUST BE REJECTED.

It is clear from the information provided above that Dr. Crandall’s models are deeply flawed, both technically and because they simply ignore critical facts about how the real-world marketplace operates. However, as noted, the information filed with the Crandall declaration did not describe the key methodological assumptions that he

employed and did not include critical underlying data used to develop his studies. *See Ex Parte* Letter from James P. Young to Magalie Roman Salas (May 21, 2001). Despite repeated requests for this material beginning shortly after the Crandall declaration was filed, *id.*, USTA has attempted to slow roll the Commission and interested parties. To date, USTA has only turned over limited backup information for one of the models used by Dr. Crandall (the CSMG study) – and that only 10 days before opening comments were due. As a consequence, this *ex parte* cannot provide a full analysis of these materials.

With regard to the data Dr. Crandall used in his models, USTA has told parties that, if they want it, they can pay for it. That would mean that each and every party to this proceeding that wanted to assess fully the accuracy of Dr. Crandall's approach would need to spend on the order of \$100,000 for this privilege.³⁶

More critically, USTA continues to maintain an iron curtain around the OLS and Probit models that Dr. Crandall developed. *See Ex Parte* Letter from Keith Townsend to Magalie Roman Salas (June 1, 2001). Without full access to Dr. Crandall's studies and inputs it is impossible to verify fully whether he accurately estimated (i) the location of high-capacity customers; (ii) the potential telecommunications revenues for buildings containing such high-capacity customers; (iii) the costs of extending networks to these buildings; or (iv) the revenues that would be generated from such network extensions. *See Ex Parte* Letter from James P. Young to Magalie Roman Salas (May 21, 2001).

³⁶ *See supra* note 2.

Because Dr. Crandall's conclusions are a result of the application of three models in succession, each is a critical link in assessing the validity of his conclusions regarding these matters. *Id.*

As described above, Dr. Crandall's assertion that carriers can efficiently serve customers is based upon the purported revenue potential for various buildings in particular locations (as calculated by the Probit and OLS models). Thus, the entire basis for Dr. Crandall's assertions evaporates if his revenue estimates are faulty or unreliable. But no party – including the Commission – can assess the validity of those revenue assumptions without full access to the Probit and OLS models, identification of the inputs to the models that were based upon sampling, and an explanation of the steps that were taken to assure that the conclusions drawn from the sample may be extended more generally.

Commenters also need access to the TNS Telecom survey that served as the basis for the “regressions” performed by the Probit and OLS models that purport to identify “likely” high-capacity customers and the potential telecommunications revenues from the buildings in which those high-capacity customers are located. This information is essential because, even if the Probit/OLS models were computationally correct and theoretically sound – neither of which has been demonstrated – selective use of information, inappropriate weighting of results or biased interpretation of respondent

information can cause the inputs to be invalid and thus invalidate all conclusions drawn from the analysis.³⁷

Further, to assess Dr. Crandall's assumptions, analytical methodology and conclusions regarding the costs of extending competitive LEC fiber, reviewing parties need access to the iMap data Dr. Crandall relied upon, as well as access to the models he used to calculate the distance between competitive LEC fiber and alleged high capacity business locations, together with any inputs used in developing or running those models. Without access to this information, there is no way to know whether Dr. Crandall correctly calculated the distance between competitive LEC local fiber and a high capacity customer; whether the calculated distances accurately reflect terrain and rights-of-way considerations; or whether the underlying data accurately locate competitive LEC local fiber. Access to this information is also necessary because failure to properly quantify the costs of reaching such buildings would generate erroneous conclusions as to whether competitive LECs can economically serve those buildings.

A few examples aptly illustrate why Dr. Crandall's analysis cannot be relied upon without full access to his models and underlying data. For instance, Dr. Crandall uses the following equation for calculating the probability that a customer will purchase a high capacity service:

³⁷ In particular, reviewing parties need a full explanation of the TNS survey methodology, including (i) whether the data were gathered through in-depth meetings or telephone interviews; (ii) who gathered the data; (iii) how potential respondents were qualified; (iv) the completion rate for those interviews; and (v) how individual results were weighted in the aggregation process.

$$\text{Prob}(\text{Purchase high-cap}) = \text{Prob}(Y_i = 1) = \text{Prob}(\epsilon > -X_i \beta) = \\ 1 - \text{Standard Normal Distribution}(-X_i \beta)$$

Crandall Dec. at 37. In his formula, Dr. Crandall used $Y = 1$ to indicate a customer that will purchase a high-capacity service. Then he used the Probit model to calculate the probability that $Y = 1$. The probability that $Y = 1$ for a customer is, by definition, between 0 and 1.0. For a customer to be considered a “potential” high-cap customer, Dr. Crandall must specify a threshold probability. If the Probit model calculates a probability above the threshold for a customer, then $Y = 1$ for that customer and it is included in his set of “potential” customers. Therefore, the selected threshold probability is an important factor in determining the number of “potential” customers. However, Dr. Crandall did not specify the value of the threshold probability that he used, let alone explain or justify that value.

Although not clear, other statements in Dr. Crandall’s declaration indicate that the threshold was far too low. In footnote 38 of his declaration, Dr. Crandall states that for the weighted survey sample, he estimated that 5.8 percent of businesses have a high capacity connection, and that in the Probit model “a probability cutoff of .1886 is necessary to infer the 5.8%” result. As a matter of basic statistics, the probability of cutoff (threshold probability) should be specified first, and then the model used determine the percentage of businesses that are high-capacity customers. Instead, he states that he used the process backwards – *i.e.*, he used the percentage of customers to determine the probability of cutoff. On the other hand, if Dr. Crandall in fact used a cutoff probability of 0.1886 to draw telecommunications customers into the set of high-capacity customers, this is an arbitrarily low probability that would treat numerous customers with a low

probability of purchasing high-capacity service as potential high-capacity customers. Without access to Dr. Crandall's models and underlying assumptions, however, it is ultimately impossible to determine whether his methodology is sound or whether he has simply reverse-engineered key inputs to obtain a pre-ordained result.

Another critical failure of documentation concerns the error term, ϵ , in the Probit regression. Dr. Crandall assumes that ϵ is normally distributed. Crandall Dec. at 37. A sound statistical analysis, however, would examine the distribution of ϵ (e.g., a graph of ϵ based on sample data) to justify the distribution assumption. Dr. Crandall provides no such support for his distribution assumption, and without access to the TNS Survey data, there is no way for anyone to test this assumption.

And even in the single instance where USTA has provided some support for one of Dr. Crandall's models in time for incorporation for this filing, the information it has provided has not permitted meaningful review. For example, the "electronic" version of the CSMG study supplied by USTA on a CD contains a *read-only* Excel spreadsheet that cannot be used to perform independent sensitivity studies of the model. Further, the spreadsheet only contains data for a *single* case: extending fiber 500 feet in Cleveland, Ohio.

Likewise, in the "detail" USTA provided for the CSMG network extension model, in a number of instances the "source" provided for several types of recurring expenses is "CSMG analysis," without any explanation of what "analysis" entailed. *See* CSMG Report at 31-32. In this same vein, the backup material reports the cost of trenching – a critical component of the costs of deploying fiber – to be \$17 - \$30/foot. *Id.*

at 31. Although this is a highly variable cost (and, as shown above considerably below the costs the Commission itself developed), nothing in the supporting documentation discusses how the costs applicable to any individual city is established other than to say it was based on “[i]nterviews with city officials.” *Id.* In other instances, critical inputs are purportedly drawn from “interviews” without disclosure of the number of interviews performed, the qualifications of the interviewee or the variability for the results obtained through the interview process. *Id.* at 31-32.

* * *

USTA’s end game here is obvious. Every day that illegal use restrictions remain in place is yet another day in which the incumbent LECs, by their own admissions, collect supracompetitive access charges. The Commission should make clear it will not countenance USTA’s attempts to achieve its desired result through delay and obfuscation. It should promptly strike the Crandall declaration as unverified and unverifiable, and act promptly to end the interim use restrictions on combinations of the loop and transport network elements.



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Re: Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98 (Use of
Unbundled Network Elements to Provide Exchange Access Services)

Dear Ms. Salas:

AT&T Corp. ("AT&T") submits this brief to address three claims made by the incumbent local exchange carriers ("LECs") in their reply comments in the above-captioned proceeding (filed April 30, 2001). As AT&T showed in its Comments and Reply Comments, the Commission's *UNE Remand Order* found that new entrants were impaired in their ability to obtain all types of loop and transport facilities outside the incumbents' network, including high capacity facilities. That finding necessarily means that new entrants are also impaired in their ability to provide all types of services, including special access services, that can be offered over those same facilities. In an attempt to avoid this obvious application of the conclusions in the *UNE Remand Order*, the incumbents argue that they are inapplicable as a legal matter because of (a) Section 251(g); (b) a supposed distinction between mass market and large business services; and (c) the fact that new entrants provide special access though incumbents' tariffed services. Each of these arguments is wrong.

First, SBC and Verizon's claim that Section 251(g) "authorizes the Commission to limit the use of UNEs" so as not to "disrupt the access charge regime" is flatly incorrect and was rejected by the Commission in 1996. See SBC/Verizon Reply at 29-30. The *Local Competition Order* expressly held that section 251(g) "*does not apply* to the exchange access 'service' [that] requesting carriers may provide themselves or others after purchasing unbundled elements." See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, ¶ 362 (1996) ("*Local Competition Order*") (emphasis added). As the Commission explained, "the primary purpose of section

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251(g) is to preserve the right of interexchange carriers to order and receive exchange access services *if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.*" *Id.* (emphasis added). In short, the Commission has long recognized that Congress fully expected new entrants would use unbundled network elements to provide access services in competition with the incumbents. Such competition is not a "disruption" of the access charge regime that Congress sought to avoid in Section 251(g); to the contrary, fostering such competition is the principal purpose of the Act. *See, e.g., Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982, ¶ 269 (1997) (Commission declined to prescribe access rates because it expected UNE-based competition to ILEC access services would introduce price discipline).

The Commission's recent order concerning reciprocal compensation for ISP-bound traffic does not affect these conclusions.¹ In that order, the Commission concluded that "a reasonable reading of the statute is that Congress intended to exclude the traffic listed in [Section 251(g)] from the reciprocal compensation requirements of [Section 251(b)(5)]." *Id.* ¶ 34. Even if the Commission's conclusion that Section 251(g) is in tension with Section 251(b)(5) is correct – and it is not² – there is no conceivable conflict between Sections 251(g) and 251(c)(3). The Commission has always recognized that unbundled network elements and the incumbents' access services have an independent co-existence under the statute (*Local Competition Order* ¶ 362), and the Commission did not suggest otherwise in the *Reciprocal Compensation Order*.³ Indeed, even under the Commission's interim use restrictions on loop-transport combinations, competitive LECs are permitted to use unbundled elements to provide special access services, as long as they are also providing a substantial amount of the customer's local service.⁴ Under the logic of SBC and Verizon's argument, Section 251(g) would preclude the use of unbundled elements to provide *any* access service – a proposition the Commission has consistently rejected and which would radically undermine the Commission's entire implementation of Section 251(c)(3).

¹ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.*, CC Docket Nos. 96-98 and 98-68, Order on Remand and Report and Order, FCC 01-131 (rel. April 27, 2001) ("*Reciprocal Compensation Order*"); SBC/Verizon Reply at 29-30.

² AT&T and others have sought judicial review of the *Reciprocal Compensation Order*. *See WorldCom et al. v. FCC*, Nos. 01-1218 and 01-1243 (D.C. Cir.).

³ To the contrary, the Commission stated that its analysis in the *Reciprocal Compensation Order* differed from the *Local Competition Order* only with respect to the interplay between Section 251(g) and 251(b)(5); in other respects, the Commission found that its analysis was "consistent with previous Commission orders construing Section 251(g)." *Reciprocal Compensation Order* ¶ 34, 36 n.64.

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd. 9587 (2000).

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Second, the incumbents also suggest that the *UNE Remand Order* analyzed “high capacity” loops and transport only with respect to “mass market local service,” and not with respect to the more limited market for large business customers. *See, e.g.*, SBC/Verizon Reply at 3-4, 11-14; BellSouth Reply at 6 & n.15. Nothing could be further from the truth. Throughout the *UNE Remand* proceeding, the incumbents repeatedly argued that the Commission should treat “high capacity” loops and transport differently, because those elements were used only to serve large businesses (as opposed to the “mass market”) and competitive LECs were assertedly able to build alternative facilities to serve such customers.⁵ The Commission expressly acknowledged those arguments – and then rejected them. *See UNE Remand Order* ¶¶ 176-78, 323-324. For example, with respect to high capacity loops, the Commission expressly disagreed “with incumbents’ assertions that we should not unbundle high-capacity loops because competitive LECs have successfully self-provisioned loops to certain large business customers.” *Id.* ¶ 184 & n.342. The Commission found that “[b]uilding out *any* loop is expensive and time-consuming, regardless of its capacity,” and that the fact that “some competitive LECs, in certain instances, have found it economical to serve certain customers using their own loops suggests to us only that carriers are unimpaired in their ability to serve those particular customers.” *Id.* ¶ 184 (emphasis added).

The Commission made similar findings with respect to high-capacity dedicated transport. In particular, the Commission specifically rejected the incumbents’ argument that such transport should not be unbundled in dense urban wire centers where large businesses are concentrated. *Id.* ¶ 343. The Commission found that the incumbents’ evidence (including its “UNE Fact Report”) did not “accurately reflect[] the extent to which alternatives are actually available to competitors,” and that “only at a granular, wire center-by-wire center level does the

⁵ *See, e.g.*, UNE Fact Report, filed May 26, 1999, pp. II-6 – II-22, III-1 – III-17 (“It makes no economic sense to treat ‘the loop’ as a single product supplied to a single class of customers in a single market. . . . [E]ven more so than with other UNEs, it is necessary to take into account the fundamental differences between ordinary and high-capacity loops, between business loops and residential ones”); SBC Comments at 23 (May 26, 1999) (arguing that high-capacity loops, especially those serving businesses, should not be unbundled because “[t]he facts conclusively show that CLECs have available alternatives to ILEC loops to reach all large business customers (those with 20 lines or more) in wire centers serving 40,000 or more access lines . . . in which CLECs have collocated”); Bell Atlantic Comments at 38-39 (May 26, 1999) (claiming that ILECs “should not be required to unbundle loops that support DSI, DS3 or higher capacities for business customers,” because CLECs “have already demonstrated their ability to serve these customers by investing in their own facilities”); Ameritech Comments at 101 (May 26, 1999) (asserting that unbundling of high-capacity loops is not warranted because “CLECs have already deployed significant alternative loop facilities in the market for large business customers . . . in dense wire centers,” which should be considered “a discrete telecommunications market”); U S WEST Comments at 38-39 (May 26, 1999); BellSouth Comments at 70-71 (May 26, 1999); GTE Comments at 64 (May 26, 1999).

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record show the presence of competitive alternatives to the incumbents' interoffice transport, *albeit on a non-ubiquitous basis.*" *Id.* ¶ 341 (emphasis added). The Commission noted that even within dense wire centers, new entrants rely mostly on the incumbents for dedicated transport, and that alternative transport facilities "generally do not travel the same route as the incumbent's facilities," which means that competitors relying on non-incumbent facilities would "have to route their traffic along indirect, inefficient routing patterns." *Id.* ¶ 343 & n.67; *see also id.* ¶¶ 338-39.

Thus, the Commission found in the *UNE Remand Order* that new entrants are impaired in their ability to offer service *even to large businesses* without unbundled access to high capacity loops and transport. Those findings are dispositive here. Because it is economically infeasible for new entrants to build or obtain alternative loop and transport facilities, they are impaired in their ability to offer *any* service that uses those facilities, be it local or special access service. As AT&T explained, "if the supply of steel were monopolized and steel were thereby difficult to obtain, it would impair all manufacturing that depends on steel, whether of automobiles or girders." AT&T Comments at 3. The incumbents have no answer to this argument, other than their attempt (improperly) to reargue the findings of the *UNE Remand Order*. *See, e.g.,* SBC/Verizon Reply at 12 (arguing that AT&T's steel analogy is inapt because, contrary to the *UNE Remand Order*, new entrants are not impaired in their ability to obtain alternative facilities to serve large businesses); BellSouth Reply at 10-11 (same); Qwest Reply at 10-12.⁶ Indeed, the fact that the incumbents are relying on exactly the same evidence to support both the use restriction relating to special access and their broader Joint Petition, which would eliminate these network elements for local service as well, powerfully confirms that there is no relevant distinction between providing local or special access service over these facilities for purposes of the impairment inquiry. *See also* Crandall Declaration at 9-10 (defining the special access market to include private line local service).

Finally, the incumbents are also wrong that new entrants are not impaired because they can offer special access over the relevant facilities through use of the incumbents' tariffed access services. *See* SBC/Verizon Reply at 1, 4-5, 16-17; Qwest Reply at 4. This claim has been rejected many times before, both by the Commission and the courts, which have all recognized that incumbents may not attempt to avoid their obligation to unbundle network elements merely because they also offer a similar "service." *UNE Remand Order* ¶¶ 67-70 ("[w]e assign little weight in our 'impair' analysis to the ability of a requesting carrier to use the incumbent LECs' resold or retail tariffed services as alternatives to unbundled network elements"); *Iowa Utils. Bd.*

⁶ Qwest argues that the steel analogy is inapt because AT&T is free to purchase unbundled loops and transport, combine them in a collocation, and offer either "automobiles or girders" "to its heart's content." *See* Qwest Reply at 10-11. But of course that is wrong: the Commission has imposed a "use restriction" on loop-transport combinations, under which competitors are prohibited from offering special access services over such facilities except in limited circumstances. Thus, like the other incumbents, Qwest is simply evading the real issue.

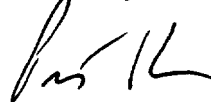
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v. *FCC*, 120 F.3d 753, 809 (8th Cir. 1997) (“[s]imply because these capabilities can be labeled as ‘services’ does not convince us that they were not intended to be unbundled as network elements . . . [w]e agree with the FCC that such an interpretation would allow the incumbent LECs to evade a substantial portion of their unbundling obligation under subsection 251(c)(3)”); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721, 735 (1999) (“impair” inquiry is whether requesting carrier can offer service through “self-provision, or with purchase from another carrier”). Even SBC and Verizon concede (at 17), as they must, that the Commission has held that the availability of the incumbents’ tariffed services is irrelevant to the impairment analysis. Moreover, any such claim misperceives the nature of the impairment inquiry itself. As the Commission has made clear, the impairment inquiry focuses on the requesting carriers’ ability to obtain alternative facilities *outside* the incumbents’ networks, “including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier.” *UNE Remand Order* ¶ 51. Access (or any other) services provided by the incumbent are thus excluded from the analysis.

Sincerely,



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Counsel for AT&T Corp.

PDK:mft

cc: Counsel of Record